

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 624 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?No
2. To be referred to the Reporter or not?
No

3. @ J
Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No
5. Whether it is to be circulated to the Civil Judge?

BABUBHAI HIRJIBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

MR DJ CHAUHAN for Petitioner

Mr.L.R. Pujari, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/04/97

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the detention order dated December 3, 1996, rendered by respondent No.1, under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short 'the PASA Act')

2. The grounds on which the impugned order of detention has been passed appear at Annexure "C". They, inter alia, indicate that the petitioner with the aid of his associates has been carrying on criminal and anti-social activities of importing, storing and supplying English liquor and one prohibition case of 1994 and two prohibition cases of 1996 have been registered in Rajkot "C" Division Baktinagar Police Station, and Gondal Taluka Police Station under the Bombay Prohibition Act against the petitioner as per the particulars set out in the grounds of detention.

3. It has been recited that the petitioner's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion, statements of three witnesses have been relied upon. It has also been recited that the petitioner's activities are likely to adversely affect the public health.

4. The statement of the witnesses indicate three incidents, viz., 4th August 1996, 8th September 1996 and 13th October 1996, which indicate the petitioner giving threats to the concerned witnesses and beating them in public and the petitioner's conduct resulting in fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the

impugned order of detention stamping the petitioner as 'boot-legger' under Section 2(b) of the PASA Act.

6. I have heard the learned advocate for the petitioner and the learned AGP for the State. The petitioner has challenged the impugned order of detention on number of grounds, inter alia, on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities, which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, C.P., reported in 1995(2) G.L.R. p.1268. In that decision, the Apex Court referred to two earlier decisions in the case of Arun Ghosh vs. State of West Bengal, reported in 1970 (1) SCC 98 and Piyush Kantilal Mehta vs. Commissioner of Police, reported in 1989 Suppl. (1) SCC 322. In Piyush Kantilal Mehta's case (supra) it was made clear that merely because a detenu was a boot-legger within the meaning of sec.2(b) of the PASA Act he could not have been preventively detained on that basis. The emphasis was with respect to whether his activities as a boot-legger would adversely affect the maintenance of public order.

7. In reply, learned A.G.P. has made reference to an earlier decision of the Supreme Court in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi vs. State of Maharashtra & another, reported in AIR 1992 SC 979.

8. In my opinion, Mustakmiya's case (supra) would apply to the facts of this case particularly since this is essentially a case of individual incidents dealing with law and order.

9. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of Mustakmiya's case, it is not necessary to deal with other grounds. Hence, the following order is passed:-

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu, Babubhai Hirjibhai Patel, shall be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute accordingly.

(swamy)